

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Service Rules for the 746-764 and)
776-794 MHz Bands, and)
Revisions to Part 27 of the)
Commission's Rules)

WT Docket No. 99-168

To: The Commission

**COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

The Association for Maximum Service Television, Inc. ("MSTV") hereby responds to the Commission's request for further comment on issues related to guard bands in the 746-764 MHz and 776-794 MHz spectrum block.¹ As MSTV stated in its comments and reply comments² and in its ex parte letters³ filed in this docket, there is no technical justification for guard bands. Public safety and broadcast users on adjacent bands can be protected by enforcement of out-of-band emission limits. Having issued a channel plan that includes guard bands,⁴ the Commission should not further limit the range of commercial uses to which the spectrum can be put by adopting arbitrary and unnecessary eligibility and use rules for the guard bands. As Commissioner

¹ Public Notice, WT Docket No. 99-168, DA 00-31 (Jan. 7, 2000).

² Comments of the Association for Maximum Service Television, Inc., WT Docket No. 99-168 (July 19, 1999); Reply Comments of the Association for Maximum Service Television, Inc., WT Docket No. 99-168 (August 13, 1999).

³ Letter from Ellen P. Goodman to Magalie Roman Salas, WT Docket No. 99-168 (Jan. 5, 2000); Letter from Jonathan D. Blake and Ellen P. Goodman to Magalie Roman Salas, WT Docket No. 99-168 (Dec. 29, 1999); Letter from Jonathan D. Blake to Magalie Roman Salas, WT Docket No. 99-168 (Dec. 27, 1999).

⁴ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, First Report and Order, FCC 00-5 (rel. Jan. 6, 2000) ("First Report and Order").

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Furchtgott-Roth notes in his partial dissent to the *First Report and Order*, “the Commission should not be dictating business models to [its] licensees. ... Moreover, we should not in good conscience adopt any proposals that eliminate an opportunity for legitimate commercial entities to compete for spectrum simply because they fail to meet newly minted criteria for a new non-statutory licensee, the band manager.”⁵

In its *Notice of Proposed Rule Making* in this proceeding, the Commission requested comment on the use of a band manager.⁶ The *Notice* did not propose, nor did it even fully vet, the idea of using a band manager for two pairs of channels and limiting eligibility for those channels to entities that would be similar to existing public safety operations in their architecture.⁷ Although the *First Report and Order* gave no hints as to what approach the Commission has been considering for the past month, news reports and industry talk suggest that the Commission was on the verge of adopting a rule that would limit eligibility for the guard bands to entities operating at very low power and providing SMR or private radio services. The justification for this approach was apparently three-fold: to protect public safety, to try out the band manager approach, and to provide more spectrum for SMR and private radio services. These justifications do not hold up under scrutiny.

The protection of public safety licensees in adjacent bands is an obviously worthy, and relatively undemanding, goal. Through the use of filters and out-of-band emissions limitations, broadcasters (both full and low power) have successfully operated on channels 14 and

⁵ *First Report and Order* (separate statement of Commissioner Furchtgott-Roth, approving in part and dissenting in part).

⁶ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, *Notice of Proposed Rule Making*, FCC 99-97 at ¶15 (rel. June 3, 1999) (“*NPRM*”).

⁷ *See id.*

69 adjacent to public safety licensees in the same service area since the early development of UHF television in the mid 1960s. Since, as the *First Report and Order* points out, traditional broadcast operations are among the most prone to causing interference,⁸ the fact that broadcasters can operate with neighboring public safety licensees surely suggests that other commercial services can as well.

We do not believe that it is necessary for the Commission to control the architecture that is deployed in the guard bands. When it allocated two separate spectrum blocks for public safety (and rejected MSTV's suggestion to reduce potential points of interference by allocating contiguous spectrum), the Commission stated that "properly crafted technical rules will minimize adjacent channel interference."⁹ In the *First Report and Order* the Commission crafted out-of-band emission limits ($43 + 10 \log_{10}(P)$ dB) that it deemed adequate to protect public safety from such interference.¹⁰ It should simply adopt those rules for the guard bands. It is ultimately the level of signal, not the type of service, that causes interference. As long as signals are kept below the specified limit, public safety will be protected. We note that, in addition, the protection of public safety can hardly justify the use of a guard band at 746 MHz, since it is broadcasting, not public safety, that currently borders that channel.

Although the *Notice* included only a vague reference to the "band manager" concept, the Commission seems to have become attached to the idea of using band managers to sublease spectrum blocks.¹¹ Indeed, the assignment of licenses to private entities which then

⁸ See *First Report and Order* at ¶17 & n.43.

⁹ *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953 at ¶13 (1998).

¹⁰ See *First Report and Order* at ¶¶103-107.

¹¹ *First Report and Order* (separate statement of Commissioner Furchtgott-Roth, approving in part and dissenting in part) (discussing "proposals that have gained currency in recent (continued...)

sublet channels to other entities, but retain responsibility for interference protection, makes good sense in some circumstances. But there is no reason that a band manager must sublet channels only for SMR, private wireless, or other services that resemble public safety uses. As the Commission's recent *Policy Statement* on spectrum management suggests, the band manager approach has broad potential to "facilitate rapid deployment of spectrum-based services."¹² If the Commission is committed to testing that approach in this proceeding, it should really test it with respect to any commercial spectrum-based service and not pre-determine (without technical justification) the eligibility for the guard band spectrum or the types of services that can be provided on that spectrum.

Finally, a decision to limit eligibility for, and use of, the guard bands as a way to ensure more SMR and private wireless spectrum would be an exercise of exactly the type of industrial policy the Commission says it rejects. According to the *Notice*, the Commission is of the "view that opening this spectrum to as wide a range of applications as possible will encourage entrepreneurial efforts to develop new technologies and services, while helping to ensure the most efficient use of this spectrum."¹³ The *First Report and Order* echoes the same view, at least with respect to 747-762 MHz and 777-792 MHz.¹⁴ We are hard pressed to see why, given the commitment to allowing the private sector to determine the composition of services in 30 MHz of

months," including band manager proposal.). Recent *ex parte* submissions from various parties argued in favor of the band manager concept. *E.g.*, *Letter from Robert L. Pettit to Magalie Roman Salas*, WT Docket No. 99-168 (Dec. 20, 1999) (Motorola).

¹² *Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement*, FCC 99-354, (Nov. 22, 1999) ("*Policy Statement*").

¹³ *Notice* at ¶ 26.

¹⁴ *First Report and Order* at ¶49.

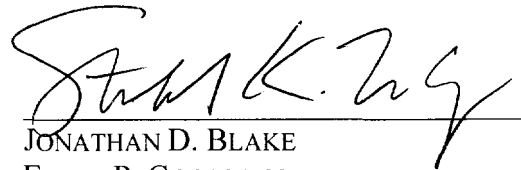
spectrum, that commitment should falter with respect to the last 6 MHz, particularly since those 6 MHz have been channelized in a way to facilitate narrowband private wireless uses.

We urge the commission not to allow this desirable piece of spectrum to be put to anything less than its most efficient use, and certainly not on the misguided premise that limiting the use of the guardband spectrum is necessary to protect public safety services. Instead, the Commission should be guided by its recently-stated policy that "spectrum management activities must focus on allowing spectrum markets to become more efficient and increasing the amount of spectrum available for use."¹⁵ To better fulfill that resolution and promote further innovation, we request that the Commission place no greater restriction on eligibility for and use of the guard bands than it has placed on other portions of the spectrum block.

Respectfully submitted,

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¹⁵ *Policy Statement at ¶2.*